MONTHLY

BULLETIN

OF THE

NATIONAL ASSOCIATION OF CREDIT MEN.

PUBLISHED BY THE

NATIONAL ASSOCIATION OF CREDIT MEN,

29-31 Liberty Street, New York.

VOLUME IV. NEW YORK, SEPTEMBER 1, 1904. No. 8.

CONTENTS.

MEMBERSHIP LIST.

The membership list is now on the press, and will be distributed when it comes from the hands of the binder. It is the largest list so far issued by the Association. Secretaries of the local associations are requested to promptly supply their members with copies of the list, as a sufficient number for each branch will be forwarded to the secretaries, charges prepaid.

Individual members of the National Association of Credit Men will receive copies directly from this office.

Announcement.

President Standart announces the appointment of Chairmen of Committees, as follows:—

Legislative—Geo. G. Ford (Lewis P. Ross), Rochester, N. Y.

Membership.—Geo. R. Barclay (Simmons Hardware Co.), St. Louis, Mo.

Improvement of Mercantile Agency Service.—C. D. Maclaren (Farwell, Ozmun, Kirk & Co.), St. Paul, Minn.

Fire Insurance.—Lee M. Hutchins (Hazeltine, Perkins Drug Co.), Grand Rapids, Mich.

Credit Department Methods.—Henry T. Smith (Smith & Co.), Chicago, Ill.

Business Literature.—T. P. Robbins (Cleveland Hardware Co.), Cleveland, Ohio.

A complete directory of the committees will be printed in the October issue of the BULLETIN.

Blacklists Privileged.

Associations of business men in Connecticut can maintain legally, for the confidential use of their members, black lists of debtors, providing their claims are undisputed.

Judge Roraback of the Superior Court has so decided and gives it as his opinion, "that it is clearly demonstrated by the evidence that the material purposes and actions of the Bridgeport Business Men's Association were innocent and lawful."

"Looking at the entire evidence as it now presents itself I cannot discover any illegal or improper object of unlawful means adopted or sanctioned by these defendants."

"The practice and rule of the Association had been never to place a name upon this list when the claim was known to be disputed or contested."

"The circulation of this list was in its nature privileged."

The list itself was not libelous, *per se:*

The case was that of D. Sherwood Thorpe against the Bridgeport Business Men's Association. Thorpe's name was put on a blacklist and he sued the Directors of the Association for $5,000 damages. The case terminated abruptly when a motion for non-suit was granted. The point was raised by the defence and sustained by the court that "delinquent lists" upon which Thorpe's name was printed were privileged communications and the same as the reports of the Dun and Bradstreet mercantile agencies.

The suit has attracted wide attention and the result is pleasing to business men generally.

Reorganization of the Consular Service.

The action taken at the last convention has brought the following from the National Business League:

"The Executive Committee of the National Business League cordially thanks the National Association of Credit Men for resolutions lately adopted in convention at New York, reaffirming endorsement of the original Lodge Bill, for the reorganization of the United States Consular service.

"Other national commercial organizations are taking similar action at their annual conventions, and with the pressure now being brought to

bear, it seems that Congress cannot much longer neglect to respond to the business interests of the country.

"When your organization has some important measure to forward and desires assistance, kindly advise the League and the matter will receive prompt attention."

Committed for Contempt of Court.

An interesting case in bankruptcy, which has attracted some attention, has terminated in the commitment of the bankrupt to prison for contempt of court.

It seems that David W. Henderson, a produce dealer in Philadelphia, in the month of December, 1902, purchased about $14,000 worth of produce; within a short time thereafter he went into bankruptcy.

Upon being examined before the referee as to how the goods were disposed of he testified that they were sold and he had lost the money obtained, in gambling and dissipation, but he refused to tell where he spent the money.

Upon application the court made an order compelling the return of $5,000 to the trustee, but the bankrupt claimed he had no money and he was thereupon committed to prison.

This is the first time in thirty-two years in that district that a bankrupt has been imprisoned for refusing to comply with an order of the court to pay over money or return property fraudulently concealed from creditors. In fact, very few cases of the kind have been reported in the entire bankruptcy jurisdiction.

The result obtained in this case was brought about only through the persistent efforts of Mr. Julius C. Levi, of A. J. & L. J. Bamberger. Mr. Levi's clients in this case were farmers located in Maryland, Virginia and Delaware. They were unable to contribute very largely to the necessary expense of conducting the case, nor would they visit Philadelphia for the purpose of testifying in criminal proceedings.

Under these circumstances Mr. Levi's only alternative was to obtain the order before referred to, which, it is expected, will keep Henderson in limbo for some time to come.

Swindlers at Work.

Within the past few weeks many complaints have reached this office, the investigation of which leads us to believe that a systematic effort is being made by a gang of swindlers to part the merchant from his merchandise. Briefly, the plan is to take a short lease of a loft or store, adopting a name closely resembling that of a well-rated business house, and then flooding the large cities with orders for merchandise. The names used by these swindlers so closely resemble names printed in the lists of the mercantile agencies, that the difference which does exist is often overlooked, and is not discovered until the postal authorities return mail which they are unable to deliver, owing to the fact that the swindlers failed to leave their forwarding address.

The *Trade Record* recently printed an interview with Chief Post Office Inspector Holden on this subject. Chief Holden's suggestions are well worth considering, and for the benefit of our readers we print the interview in full.

"We find that a great many mail order frauds are in a great measure encouraged by the negligence of credit men to properly investigate firms asking credit. When a fraudulent concern inaugurates its scheme of securing goods by mail orders it always copies the name of some reputable

house and puts this firm name or a closely similar one upon its letter heads.

"Naturally the credit man to whom the order is turned over looks up the rating books, and seeing an almost identical name well rated therein pays no attention to the perhaps trifling difference in names, but takes it for granted that it is all right and ships the goods to the address of the bogus concern.

"In a few weeks when he becomes suspicious and looks up the firm at the address given he finds that the place is closed and the proprietor gone. So are the goods.

"It would be an excellent plan if the mercantile agency books contained the exact street addresses of firms, but this, necessitating additional type lines, would swell the volumes to unwieldy proportions. Then there are other difficulties.

I always have maintained that a business house securing an order for goods from one to whom they have not sold before should request the mercantile agencies for a special report on the concern. Then all doubt as to the identity and reliability of the prospective buyer would be removed. The concern's name and street number should be given the agency, investigation by which would reveal the facts.

"Very often such swindlers rent an office for a few dollars monthly, but pose as a highly rated concern, not stating so in their orders, but simply relying on the similarity of the firm name used to that of the rate concern to do the trick.

"The sending of bogus statements of financial standing has been dispensed with by these latter day swindlers, because so many were jailed on the strength of the bogus statement. Now their plan is as I have tried to make clear.

"One might say: 'Cannot these men who start in business under the same or almost exactly the same individual name as another in the same town and in the same line of business be arrested?' Then again: 'Could the criminal law reach any one inaugurating a business with a firm name almost identical to that of some other house?'

"In both instances I say no, you cannot, for the reason that it is not a crime for any one to engage in business, the only qualification being that if they do so with criminal intent they can be prosecuted. I repeat again that if shippers would ask for a special report, giving the agencies the exact street and number used, a great deal of loss and trouble would be eliminated from business."

Chief Holden continued that during the past year the crime of fraudulent mail orders has grown to alarming proportions. Never a day passes in which his office does not receive inquiries or complaints from victims asking about the standing and whereabouts of people who have been shipped goods. Knitting mills and garment manufacturers as well as shirt and neckwear manufacturers, he said, are frequent victims, as such goods are already manufactured and easy of disposal by auction. The goods once gone, very infrequently can the swindled shipper recover them or get satisfaction by criminal proceeding, because the swindlers always work at too great a distance from their victims, and never being seen there is no chance of their legal personal identification.

The mail order fraud is one of the easiest to practice and the risk of detection can be reduced to the minimum, the perpetrators shifting their headquarters in a few days' time. Thousands of dollars' worth of goods can, of course, be ordered, received and removed in a few days.

When the victims grow suspicious and the case is placed in the hands of the postal authorities, this too late action invariably only leads to the knowledge that the swindlers have cleaned up and left for fresh fields.

Indicted for Forgery.

The New York Credit Men's Association have been instrumental in bringing about the indictment for forgery in the second degree, and the arrest of C. D. Bernsee. Several members of the Association were victimized by Bernsee, whose plan of operation was to make a small purchase, in payment of which he offered a check, receiving the difference in cash. The checks were drawn on banks located in various parts of the country, where Bernsee was unknown. Some of the checks were drawn on a Boston bank, and after ascertaining that Bernsee had neglected the mere formality of opening an account at that bank, the New York Credit Men's Association arranged to have an officer of the bank appear before the Grand Jury and testify. One of Bernsee's victims was able to testify to the fact that he had witnessed Bernsee endorse a check which was in the possession of the New York Association, and with these two witnesses the indictments were found. The District Attorney issued a bench warrant, and after a long search Bernsee was arrested at his boarding-house. Bail was set at $4,000. The detectives, in searching Bernsee's room, found further evidence of his guilt. Bernsee had a fondness for putting his thoughts in writing, for in his papers were found the following epigrams:

"New York business men are easy marks."

"All the good things in this world are not dead yet."

"It is almost a shame to take some people's money."

"A neatly dressed man is to most people a gent; they don't look behind the clothes."

"Put on a bold front and you can fool the best of 'em."

"A blank check is a poor man's best friend."

The police estimate that Bernsee's operations amount to at least $25,000.

Henry C. Quinby, counsel for the National Association of Credit Men, appeared in the case, representing the New York Credit Men's Association.

The Supreme Court of Kansas Affirms the Conviction of J. G. Stephenson.

An opinion was recently handed down by the Supreme Court of Kansas in the case of State *vs.* Stephenson which will be of particular interest to commercial houses.

The decision clearly defines what constitutes books of "original entry," and the admissibility of such books as evidence.

It also shows that the law is always ready to recognize the new and advanced methods of bookkeeping in order that justice may be done.

It seems that one J. G. Stephenson, of Scott City, Kansas, was arrested in 1903 on a charge of obtaining goods and credit upon false statements made to the H. C. Lee Mercantile Company. He was found guilty and sentenced to the penitentiary. An appeal being taken, the Supreme Court affirmed the judgment of the lower court, Chief Judge Johnston writing the opinion, in which the following points were decided:

1. Where a book of accounts is made up from orders for goods or other temporary memoranda, and constitutes the first complete and permanent record of the business, it is admissible in evidence when verified by the oath of the person making the entries, that they are correct, and were made at or near the times of the transactions.

2. The fact that such entries are recorded in a book called a "ledger" does not make them other than original, nor is it necessary

that the bookkeeper should have made the sales or billed out the goods sold to make the entries admissible in evidence.

3. If the sales made are regularly reported to the bookkeeper, and from such reports, or from orders or other temporary memoranda of the salesmen, the entries are correctly and contemporaneously made by the bookkeeper, they may be received in evidence, when duly verified by him.

This case has received notice in earlier issues of the BULLETIN. We believe, however, that a brief statement of the facts connected with the case will interest our members.

The H. D. Lee Mercantile Co. have kindly furnished a statement, which is as follows:

"Stephenson lived at Scott City and had been a customer of this company for nearly a year prior to Feb. 10th, 1903. On that date he called at our office and stated that he desired an extension on his account, a large portion of which was then overdue, in order that he might pay other obligations to other creditors, also due. He made a statement to the effect that his assets were worth $1,655 over and above his liabilities, also stating that he expected to receive some money from an estate in the East, but had been disappointed for the time being in realizing therefrom, but it would be forthcoming a few months later. Upon this statement his request was granted and an extension given by putting his indebtedness into notes; it was also agreed to give him further credit for such goods as he might need from time to time until he was able to pay his other mercantile creditors.

"On March 19th, 1903, it was reported that Stephenson had sold out and under peculiar circumstances. Investigation proved such was the case, and our representative in interviewing him found he had used the moneys realized from the sale to pay what he said were *other obligations than mercantile*, that he had not paid any mercantile indebtedness and had nothing to pay with. It was found that he had not only disposed of his stock of merchandise, but also his store building and home property, all to a local banker, who had in turn sold the store and building to a third party.

"As Stephenson had not given in his statement any indebtedness other than mercantile, it was quite evident that his statement was fraudulent, and he admitted to our representative that he had not given him the true amount of his indebtedness, therefore complaint was filed in Saline County, whereupon Stephenson was arrested and brought here for trial, which took place in August, 1903. The trial lasted three days, and was strongly contested by the defense, they resorting to all legal technicalities in behalf of their client, but the evidence was too strong and he was convicted on four counts. Later, however, judgment was arrested on three of the counts.

"A very important feature in connection with this case and the decisions resulting therefrom, is brought out with reference to the introduction of books in evidence. It was necessary to prove the amount of Stephenson's indebtedness Feb. 10th, the date he made his statement, therefore with the aid of the National Association of Credit Men, who urged those whom Stephenson owed to appear at the trial and testify as to his indebtedness to them at that time, it was possible to prove his indebtedness on the date of the statement. The defense challenged the introduction of the testimony of these various bookkeepers and credit men, but was overruled. An appeal was taken from the decision of the lower court to the Supreme Court. The higher court sustained the decision of the lower court, and the decision appears in full in *Pacific Reporter*, dated June 13th, 1904, volume 76, No. 8, page 905.

"We might add further that shortly after Stephenson's arrest, and only a week after selling out, he filed a petition in voluntary bankruptcy. His schedule of assets were only $85, consisting of some household effects (all of which were exempt), and liabilities to all the mercantile creditors of $2,900.

"The trustee in bankruptcy has entered suit against the banker to whom Stephenson sold the stock of goods, for the recovery of the same, but the case has not yet come to trial."

Organization Work.

Assistant Secretary Stockwell recently spent a few days in Portland, Maine, and Concord, New Hampshire, securing the following members:

PORTLAND, ME.

The First National Bank
The Portland National Bank
The Casco Nat'l Bank of Portland
Shaw, Hammond & Carney (Grocers)
Milliken, Tomlinson Co. (Grocers)
The Twitchell-Champlin Co. (Grocers and Packers)
D. W. True & Co. (Grocers)
Conant, Patrick & Co. (Grocers)
C. A. Weston Co. (Grocers)
Norton-Chapman Co. (Flour, Grain, &c.)
Milliken-Cousens & Co. (Dry Goods)
Wm. N. Prince & Co. (Gents' Furngs., &c.)
Parker & Thomes Co. (Dry Goods)
Allen & Co. (Clothing)
Byron Greenough & Co. (Hats, Caps, &c.)
Cook, Everett & Pennell (Drugs)
John W. Perkins Co. (Drugs)
J. E. Goold & Co. (Druggists)
A. H. Berry Shoe Co.
B. B. Farnsworth Shoe Co.
Berlin Mills Co. (Paper and Lumber)
C. M. Rice Paper Co. (Paper and Twine)
Burgess, Fobes & Co. (Paints)
Thos. P. Beals Co. (Furniture)
Kendall & Whitney (Agr'l Implts. and Seeds)

PENACOOK, N. H.

Concord Axle Co. (Wagon Axles)

CONCORD, N. H.

Wm. B. Durgin Co. (Silverware)

Mr. Stockwell will shortly make a canvass of Newark and Trenton, New Jersey. Members who can furnish Mr. Stockwell with letters of introduction to merchants, manufacturers or bankers in either of these cities may forward such letters to this office.

Bulk Goods News.

The Fifth Annual State Convention of the Missouri Retail Merchants' Association was held at St. Louis, July 26, 27, 28. One of the important subjects of discussion was the question of the sale of stocks of goods in bulk.

The courtesies of the Convention were extended to a delegation representing the St. Louis Credit Men's Association, headed by Secretary Foote and Louis D. Vogel, member of the Legislative Committee of the National Association of Credit Men.

The Committee requested the co-operation of the Missouri Retail Merchants' Association, for the purpose of securing legislation which will regulate in Missouri the transfer or sale of stocks of goods in bulk.

The result of the Committee's visit was the adoption of the following resolution:

Whereas, The unbusinesslike methods of selling stocks of merchandise in bulk without notice to creditors has become a burden to the retail and jobbing interests of our State, and

Whereas, The Missouri Retail Merchants' Association is endeavoring through organization to elevate the handling of merchandise; be it

Resolved, That our Executive Board be instructed to co-operate with the jobbing interests of our State with the view of passing legislation that will protect the mercantile interests of our State from such unfair practice.

A Deplorable Decision.

Constitutional law is defined by a witty paragrapher "as the last guess of the highest court." He may or may not have had in mind the recent astonishing decision of the Supreme Court of Ohio, by which a law designed to protect creditors and preserve commercial integrity was pronounced repugnant to the constitution of that State, but the shot hits that decision. The law thus invalidated is one enacted in the interests of business morality. It placed safeguards around transactions involving sales of stocks of goods in bulk and prevented fraudulent transfers and the resultant losses to creditors. But the court holds that the act placed an unwarranted restriction upon the right of an individual to acquire and possess property, because it required the prospective purchaser of a bulk stock to procure the names of the seller's creditors and notify them of his intention.

The decision strikes a crushing blow at the credit system. It will deprive many worthy tradesmen of credit accommodations absolutely necessary to the success of their business, for wholesale interests will in self defense be compelled to draw the lines closer. It will restore the conditions under which fraudulent transfers were frequently made and creditors deliberately robbed. And the creditor will not be the only sufferer. In States which have no bulk sale laws stocks of goods dishonestly sold in bulk are frequently put up for sale to the consumers at absurdly low prices, thus depriving the honest dealers of the right to earn a fair profit on their sales. It is unfortunate that a law safeguarding the interests of honest tradesmen, one that will stand the test of the courts, cannot be prepared and placed upon the statute books of every State. An act of this character is needed by all legitimate commercial interests.—*Farm Implement News*, Chicago, Ill., Aug. 18, 1904.

Items of Interest.

The American Bankers' Association is to hold its Thirtieth Annual Convention in New York City, September 14, 15, 16.

The Detroit Credit Men's Association has issued a printed list of unreliable Fire Insurance Companies doing business in the State of Michigan. The list contains eighty-six names and is supplied in quantities at a nominal rate to the members of the Association.

Judge Lanning, in the United States District Court of New Jersey, has appointed Geo. R. Beach receiver for the International Mercantile Agency. The application for the appointment of a receiver was made on behalf of the stockholders by John Enright, of Jersey City. Attachments against the company have been filed by Thos. N. McCauley, a former president, and by Thos. Russell, Mr. Russell's claim being for binding the reference books.

The International Mercantile Agency has brought a suit in equity against Mr. McCauley. District Attorney Jerome is investigating the charges contained in the papers filed in this suit.

Mr. Wm. A. Prendergast, formerly Secretary and Treasurer of the National Association of Credit Men, and later connected with the International Mercantile Agency, as Vice-President and General Manager, severed his connection with that company, by resignation, on July 15, 1904, and Mr. Frederick R. Boocock, formerly Secretary of the National Association of Credit Men, and occupying the position with the International Mercantile Agency, of Assistant Manager, resigned from that office August 1, 1904.

Note.

The decision of the Supreme Court of Utah on the question of the constitutionality of the bulk goods law is printed in full in this issue of the BULLETIN.

The Theory of Credit, From a Banker's Standpoint.

W. C. PATTERSON, PRES., LOS ANGELES NATIONAL BANK.

"The theory of credit in mercantile lines is not unlike that as applied to banking. The customer arranges for the right to draw upon the dealer's stock of goods and pays for the same with his right to draw upon the bank.

"In any event there must be a basis for credit, and the merchant as well as the banker, must acquire the faculty of passing upon the sufficiency of such basis. Each extension of credit should rest upon such facts as will assure payment of the obligation, and three elements enter into the calculation:

"First.—The financial risk, in which is involved actual property and tangible assets, with their ready market or cash value.

"Second.—The moral risk. Into this enters the character and habits of the debtor, and this element in many instances is of fully as great importance as the 'financial.' Character is the basis of every financial success, and the man who has means without character, is likely to be an unreliable factor in business ventures.

"If the debtor is orderly and systematic in his business methods; if he has his stock of goods well arranged, clean, and neat; if his books are carefully kept, and if his personal habits are sober, frugal and industrious, he has acquired a capital which, in many instances, is of itself almost sufficient to secure for him a reasonable line of credit.

"Third.—The third element is the probability that the debtor's business management is such that he can without question meet his engagements at the time or times agreed upon.

"Many a man will in all sincerity promise to pay at a certain time, when as a matter of fact his business is not so organized, or his plans so laid that he can make good his own promises. The creditor must be a sufficient judge of human nature to weigh the probability of such a

man's knowing his own mind, or being entirely familiar with his own business.

"It is true that banks who are the conservators of vast sums of other people's money, feel it to be necessary to draw the lines somewhat closer than is the custom among merchants, yet the same general principles apply.

"The bank feels every pulsation of quickened enterprise and if well conducted it will do what it can within conservative lines to encourage and foster every work and movement which tend toward the development of the resources of the community.

"It is a fallacy to suppose that high capitalization is necessary to successful banking. A reasonable capital, of course, is necessary, but the character of the personnel of the management is the greatest factor in inspiring public confidence. Never in the history of the country has there been a greater demand for men of the highest personal character to occupy prominent positions in financial institutions, men of integrity, men of courage, men of sobriety, men of strong convictions."

The Part the Credit Man Plays.

LUCIEN B. HALL.

Every business house is like a stage. In a small establishment one man plays many parts, but in a large concern each one has his particular part to play, and the success of the house depends largely upon how well each plays his part. To the debtor, the credit man is the villain in the play or the meanest man in the house. The salesman is the one who makes himself generally agreeable to the trade, tries to win their confidence and secure their orders. He plays his cards to win their friendship. On the other hand, the one looking after credits must look at all questions without sentiment or prejudice, simply taking what cold facts he can gather and weigh them, and then decide accordingly. To the outside world this may seem easy, but we, who have this to do, know how difficult are these decisions. For instance, a traveler sends in an order for a new customer. The report we have is rather favorable. He is a new man, and his success is not yet assured. He has never, perhaps, been in business before, and upon the action taken with this order depends this man's future business. The salesman says he is a nice fellow from all he can learn, and thinks he will surely succeed. Not only are we obliged to know this would-be customer but we must also know our salesman thoroughly, and make due allowance for the information he gives us. Not that he would misrepresent facts, but he may be one of those optimistic salesmen who thinks every one is all right. It is not necessary for him to think otherwise, and as it is easier to feel kindly toward his customer, he gives him the benefit of any doubt, as he feels he is in no way responsible for his account. We have other men who thoroughly weigh all sides of the question before presenting an opinion, and we can always rely on their judgment. Now, all these things must be taken into consideration, for, if goods are shipped and a loss is made, it shows out in bold figures on the profit and loss account. If the order is turned down and the purchaser offended, and he should afterwards succeed in business, he is a living example of the credit man's mistake, and he will occasionally hear how well this man has succeeded and how he would be buying of his house except for his bad judgment in refusing to give credit. If he is not reminded of the circumstance, the fact nevertheless exists, and he knows it, and, unless he has a level head, the next time

the same condition presents itself he may err in the other direction. The mistakes of the credit man are not like those of the doctor, which die with the patient—they are ever before us.

But, on the other hand, when he makes a wise and correct decision, and the one fails to whom he has refused credit, this fact is soon forgotten. The man is out of business, and there is nothing on the books to show that he used good judgment in this case.

The credit man is not a very popular actor on the business stage, as his real worth is only known to his house. But out of business hours, when he is not playing his part in the business drama, this same credit man may be one of the jolliest of men. I am sorry to say, however, that his life has a tendency to make him otherwise, as the part he plays is not altogether rosy. As a general rule, I don't believe that credit men obtain as much information regarding their patrons, from their travelers, as they should. I think it would be time well spent if every one would talk over, with the traveler, every customer on his route in order to post himself as to the character and habits of every debtor on his books.

Unpleasant correspondence seems to fall to the lot of the credit man. It is no easy thing to write the customer that he must pay up his account at once, and at the same time keep his good will and future business. It is hard to dun a man when he is behind and at the same time make him happy. I have observed, however, that the one who makes the least enemies in this sort of work is the man who is outspoken, candid, and tells his debtor just what he wants without any equivocations or excuses. If you do not wish to fill an order because the man is now owing you all he should, tell him so, but do not try to deceive him by allowing him to think that you are out of the goods, or cannot fill the order for any other reason than the fact that he is behind and must pay. When you deviate from the plain, straight facts you lengthen the agony, and the debtor has less respect for you when he finds out the truth.—*Bagology.*

Credits and Collections.

ADDRESS DELIVERED BY O. E. CHILD BEFORE ILLINOIS DEALERS' ASSOCIATION.

Following is an address on "Credits," delivered before the Illinois Dealers' Association at Bloomington by O. E. Child, of the Deere & Mansur Company of Moline, Ill.:

"The most striking paradox of our civilization is a man quarreling with his bread and butter. Exactly such a condition confronts us in our day, wherein the forces of capital are arrayed for combat against the hosts of labor, and *vice versa;* the one indispensable to the other, the other dependent upon the one. Truly a striking paradox. In a much less degree, but yet painfully apparent, has seemed by some to be the attitude of manufacturer to seller and consumer. That such a feeling is repugnant and fast becoming obsolete is happily evidenced here, where dealer invites jobber and manufacturer to meet him on common ground. No sober-minded man will deny for a moment that we should be on the most confidential terms and the warmest of friends. Fortunately, that view obtains to-day as never before in implement circles, and our pleasure is great in joining with the retail dealers in the discussion of questions vital to our mutual mercantile existence.

"Is the question of credits and collections of vital mutual interest to manufacturer and dealer? Possibly the average answer would be that the manufacturer is interested in the dealer's collections to the extent of meeting his own bills. Granted, a very important interest. But there

is back of that a principle which the implement manufacturer recognizes as essential to his very existence, and in which he should educate and encourage his trade to the maximum extent. You have heard of the peculiar physical affinity between the biceps and maxillary, whereby the mouth opens when the elbow bends. I have learned from experience, the sage of preceptors, that just as truly does a machine work better if first settled for. This is no whim nor pet theory of mine, but is a principle so widely recognized by manufacturers that all heavy machinery contracts not only bind the seller to take such settlement, but affix penalties for not doing so. So vital is this principle that most manufacturers specify a forfeiture of all warranty, and hold the agent personally responsible for machinery delivered without first having in his possession full and complete settlement, according to the conditions of the order. So thoroughly grounded in his belief is the manufacturer that he knows his reputation, which is a very important asset, depends upon rigid adherence to this requirement. Not that all or any considerable per cent. of users are dishonest. The exact reverse is true. But there is an inbred tendency in all of us to carry selfish interests above the interests of our fellows, and this has developed to a goodly extent in the user of a machine. He has contracted for a machine, and he should have his money's worth. But if he feels that his own good money is in that machine, or that his notes are issued in settlement thereof, he is more guarded in the tests applied and more scrupulous in observing the terms of its warranty, more willing to render friendly service in case of trouble, and more reasonable in his demands for concessions. Not only this, but you will all admit that a purchaser who has staked his judgment on a certain brand of goods is zealous in vindicating his judgment among his neighbors who are using other brands.

"Contagion is sometimes a good thing, and in the recognition of this great factor in machine selling it is gratifying to know that the manufacturer does not stand alone, but is being ably abetted and seconded by prudent dealers. The old chestnut, 'Sauce for the goose is sauce for the gander,' is applying to this case to such an extent that many dealers could not be convinced that it should not apply to a plow as well as to a threshing rig, and it was but a few days ago that a prosperous and successful dealer said to me, in discussing the subject: 'Not a machine, great or small, not even 100 pounds of twine, leaves my store on credit without first being settled for by note.' While this particular case may be a trifle extreme, yet this dealer has educated his trade up to it and makes it win. We cannot always operate under inflexible rules, yet I join with all manufacturers in recommending a strict adherence to this rule as it applies to farm machinery. So much depends upon it—the reputation of the goods; the good name of the manufacturer; the profit of the dealer; the peace of mind of all concerned.

"The question of collecting notes taken in settlement for machinery is another one which is complex and many-sided. This is partly the fault of manufacturers and dealers, who, in their anxiety for trade, not only take some chances which prudence would forbid, but who also have, through their leniency with the trade, allowed their customers to get into the habit of disregarding maturity dates, thinking that it will be just as well to pay a little later, and letting matters stand accordingly.

"In this, as well as in all other branches of a business, no inflexible rules can be laid down, but we would advocate a system of education among the people along this line, with the end in view of convincing men that there is a moral obligation incurred, as well as a legal contract, when they sign a note, sacredly promising to pay a certain specified amount

upon a definite, fixed date. The maker of such note should be willing to concede that the holder thereof is entitled to his money on the date due, and not at such times afterward as may suit the convenience of the payor.

"In our own business we do not make it a rule to be arbitrary nor severe in the collection of our customers' paper, although we sometimes question whether or not the customer would not have as great, or possibly greater, respect for our business ability, were we to insist, after terms are once agreed upon, that all parties connected with such agreement should adhere as rigidly thereto as the letter of the contract implies.

"If this be true from the standpoint of the wholesaler, would not the same principle hold good with the retailer? Obligations due to him are just as sacred as his obligations to the houses he patronizes, and his money for meeting his bills to such houses should be forthcoming from his customers when their paper is due. In some localities farmers and purchasers of farm machinery are given to understand that their payments will be expected promptly at maturity, and that they must bear that fact in mind and not disappoint the dealer, who has his own obligations to meet, and who must necessarily depend upon their punctuality in taking care of his own bills.

"Without taking the position of an extremist or recommending arbitrary methods in the enforcement of contracts, we do take the position that it is better for the farmer, better for the dealer and better for all concerned to educate the trade up to this standard, which can be done, as there is possibly no one element entering more largely into the credit rating of the retailer than the manner in which he meets his payments. In fact, one mercantile agency has been organized upon this basis, and rates all merchants on the standard of promptness, in addition to their financial rating. In fact, many credit men place character and promptness even beyond a retailer's financial strength. The retailer whose resources are tied up in his business must necessarily depend upon realizing from his assets before meeting his own obligations, and the men whom he trusts are in duty bound to see that he does not suffer from the confidence he has reposed in them. Nor do we think that a dealer is a winner in the long run because of extreme leniency to his trade, as you could all, no doubt, point to instances within your own recollection where men have made their payments to the creditor who does the crowding, leaving his friend, who is inclined to help him, until the last. And while the means employed by some collectors may be too rigid for perpetuation in business, yet a firm stand for what is coming to you will not, in the long run, work to your disadvantage, but, on the contrary, it will be found by experience that the man who owes you nothing, who has met his bills promptly, and who can look you in the face, feels more like buying more from you and doing business with you in the future than the man who evades you in the street and who shuns meeting you on every occasion. But who to trust and to what extent leads us to the consideration of the second head mentioned in our topic, namely, that of credits.

"In large mercantile houses, in banks and trust companies and heavy business institutions, there has developed within the last few years a profession distinct within itself. The large percentage of the business of this country being done upon a credit basis—some say 95 per cent.—a system of determining who is and who is not worthy of the extension of credit has been a question which perplexes the most profound minds. With his usual alacrity in meeting an emergency, the American business man has undertaken to solve this problem by creating credit departments and by educating men in the science of accounts, who have charge of

these credit departments and whose business it is to determine the financial ability of proposed customers; to study their characters; to investigate their methods of doing business; to consult all authorities available, and to exhaust all means of information in ascertaining whether or not the risk is safe and the customer desirable.

"In this age of organization a great association has been formed, known as the National Association of Credit Men. An office is maintained in the City of New York for the National Association, and now almost every jobbing center in the country is represented by a local organization, working in harmony and upon plans outlined by the National Association.

"Too many and too devious are the ways and methods employed by these professional credit men in obtaining information and passing upon credits to go into details here; neither are you so much interested in knowing whether or not the principles evolved and the methods employed would be applicable to your business as retailers. There are many points of difference between passing upon a credit from the standpoint of the wholesaler and that of the retailer, and yet there are many points of contact where the same principles can be employed. While the credit man from the head office of a large mercantile association is investigating the antecedents of a proposed risk by consulting his mercantile reports, special reports, credit rating, etc., all of which would be of no value to the retailer, because of the absence of credit among agriculturists, yet over these appliances the retailer has some distinct advantages. If 500 contracts are referred to me at my office in Moline, upon which I must conduct some investigation to satisfy myself as to the credit rating of 500 different customers, all of whom are strangers to me and none of whom I have ever met personally, I am laboring under the disadvantage of regarding all those men alike. Herein has the retailer a distinct advantage, in that he may know personally every man he deals with, come in contact with him, look him in the eye and talk to him, size him up and from his own lips obtain information regarding his affairs, which because of their close proximity can be readily verified or disproved. You can know the age of the man; you can know something of his health and the size of his family; of his habits; his reputation in meeting his bills; whether or not he owns real estate; whether or not he is operating on capital advanced by some other party; and with all of these means so readily at hand it will be seen that mistakes in judgment in the granting of credit may be reduced to the minimum.

"If you gentlemen continue in the implement business, there are at least two things you must surely do. First, you must buy, and, second, you must sell. You will not take issue with me when I say that skill and judgment are required in correct buying, and that you expend a great deal of thought, time and investigation in the selection of goods suited and adapted to your trade. You will also agree with me when I say that tact, skill and judgment are also necessary to safe salesmanship. If you buy successfully, you must study the art of buying. If you sell advantageously, you must study the art of salesmanship and all its allied credits, as quite three-fourths—and some say 95 per cent. of our commercial transactions are made on credit. Whether right or wrong, credit and commerce are as inseparable as the Pleiades. Credit, the foundation of commerce, is the Atlas on which rest the vast commercial interests of this world of ours. It is the life of every transaction, and without it commerce would be as helpless as the human being without the ever-present supply of life-sustaining oxygen. Knowing, therefore, that the credit system is with us for at least all your time and mine, how

important that we apply ourselves to the study of its underlying principles, for it should not be supposed for one moment that men unfamiliar with the uses, practices, laws and customs that govern commercial transactions of the world can stand successfully in competition with those who have spent their best years in study and training for the duties of their chosen calling.

"As the credit institution is with us, and with us to stay, your success in business and mine depend upon individual study and mastery of the credit situation. Whether you are an implement dealer, operating on a capital of $10,000, or a steel or oil magnate, on $10,000,000, you must recognize this condition and diligently study the fundamental tests which apply in determining risks. Learn your man; know his circumstances; familiarize yourself with his financial ability. Is he prompt? Has he sufficient operating capital? But know, also, that not all of his resources are subject to measurement by the dollar-and-cent standard. He may have some other assets, one of the first to suggest itself to me being self-respect in business. Mr. Moody, on being asked how to get people to believe in the Gospel, replied: 'First believe it yourself.' So if a man seeking business relations with others would command their respect he must first respect himself. It is not sufficient that a man should be just good enough to keep out of jail or operate on quasi-respectable lines for 'policy's sake.' God's masterpiece in creation is the man who is honorable in his dealings with his fellows because it is right—a man actuated by a lofty self-respect. Such a man has got to lose more than his money before he 'goes broke.' Creditors do not have to lie awake nights worrying over his liabilities.

"The law presumes a man innocent until proven guilty. An infallible character test is a man's estimate of his fellows and the respect he has for their interests. If a man can't believe in other men, he can't believe in himself. There are scoundrels and dead beats lying in wait to catch the unwary, but instead of condemning mankind because of these counterfeits of man, I beg of you not to let any number of scalawags destroy your faith in the integrity of men as a whole. The credit man's business is to differentiate and separate the sheep from the goats.

"The second appealing to me as a valuable asset is a sense of justice in business transactions. I would hew out the rock for my own foundation, and not build my house on the ruins of my brother's. 'Thou shalt not bear false witness' was thundered down from Sinai centuries ago, but it is still good doctrine. A man need not be distinctly religious, nor a member of a church to cherish in his breast this strong instinct of natural justice, which should keep him from working any ill to his neighbor.

"You will notice that I place a high estimate upon character. You cannot legislate a man honest; you cannot tie him up so tightly but that loopholes for the unscrupulous will be either found or invented. A man's bank account may sometimes run dry, but if he has on deposit a good supply of integrity, subject to check, he is more to be desired than the well-rated individual who knows from practice how to place his property in his wife's name on short notice. In short, character is the potent factor in our civilization that changes the face of nature, levels mountains, builds railroads, founds cities, evokes factories and reduces Old Ocean to convenient ponds. Who of us would care to untwist our debt from the rough philosophy of Martin Luther and the molding influence he has had on the world? Wellington asserted that Napoleon's presence on a battlefield was equal to that of 40,000 soldiers. Would we, if we could, tear from our escutcheon the image of him who was first in peace, first in war

and first in the hearts of his countrymen, or the indelible impress of Lincoln's life, whose character as an emancipator expands our national sphere even to the comprehension of the ignorant darky who, hearing of a rebellion in heaven, remarked: 'It won't last long, for Uncl Abe's there now.'"

Fire Insurance.

ADDRESS DELIVERED BY FRANK A. VERNON AT THE JUNE MEETING OF THE DETROIT CREDIT MEN'S ASSOCIATION.

Insurance has been called the hand-maid of commerce. That sounds well, anyway. I suppose it would have been just as clear a statement, however, to have said, "Insurance is Trade's Siamese-twin sister, and, like Liberty and Union, one and inseparable."

Trade is an interchange of commodities.. Insurance is the distribution of disasters—an undertaking whereby the contingent disasters of the few are equitably borne by the many.

Is insurance (this distribution of individual calamity) a necessity in granting credit?

If this must be answered by yes or no, I would say unhesitatingly yes. There are cases, however, where insurance is not a necessity in granting credit. These cases arise where a man is possessed of much property and has the same widely scattered, so that no single fire or cyclone can materially affect his financial standing.

Insurance is an absolute necessity in granting credit to a man, no matter how wealthy, who has his eggs all in one basket. This is no time or place for a discussion of rates, but often in my experience I have met men who, claiming rates were too high, declined, as they said, "to be robbed," and yet I have seen these same men robbed in a single hour of all their possessions by the fire fiend.

We might make an example of a very favorable case. A young man of good family, well started in business, married, owning a good building and a stock worth fifty thousand dollars, no insurance. What assurance can anyone have who sells him that he can pay his bills in event of a fire? None whatever. A fire occurs in his place from his own fault, or from exposure, and the entire stock and building are destroyed. Of course, the young man has youth, health, ambition, integrity, and he *may* pay, surely will pay if able, but too often bankruptcy is the only thing in sight.

To my mind insurance is an absolute necessity in granting credit in all cases, and any firm selling on credit to an uninsured man is adding to its regular business an insurance department on so small a scale that the law of average will hasten the end of a disastrous career. Luck might save them, but luck is a poor thing to count on. There is no need to multiply words over this proposition. The protection afforded by insurance to credit is self-evident and a necessity.

"Is insurance properly investigated by credit men?" stirs up a regular underwriter who tries to do business fairly, writing at a rate which insures enough income to pay expenses, losses and dividends. Some people act as if they thought insurance companies were charitable or philanthropic institutions. Well, they are not. They are organized by capital for the same legitimate reason that prompts all investment, *viz.*, profit or dividends, and they have a right to such rates as will meet expenses, pay losses, and build up a substantial surplus to meet extraordinary disasters like the Chicago, Baltimore and Toronto conflagrations. An underwriter realizes too often how prone insurers and creditors are

to accept anything that looks like an insurance policy without asking its value, and we often find absolutely irresponsible companies making absurdly low rates, and thus depriving reliable companies of an adequate income to meet losses.

The company I have the honor to represent as special agent has six million assets and three million net surplus. We *have* to pay our losses, but many wild-cat companies in this State never pay their losses and have no property so that they can be compelled to pay.

The notorious E. A. Shanklin and Dr. S. W. Jacobs have long been operating in Chicago. They claim to represent:

Standard Insurance Co.,
Germania Fire Insurance Co.,
Fire Assurance Association,
Farmers' and Manufacturers',
Great Britain of London,
Royal Underwriters' Association,
Citizens' Insurance Co.,
Central Insurance Co.

The United States Government arrested both of these celebrated frauds for fraudulent use of the mails. Jacobs had $5,000 to bail himself out, but Shanklin was in jail at last account. Yet these men are alleged to have received thousands of dollars for worthless policies. The sad part of these swindling operations is the fact that local men are often found who will furnish these wild-cat companies, and thus enable the assured to say, "We thought *he* (the local agent) was all right."

Judge Gamble, of Iowa, recently held a local agent liable for the value of the policies he placed, if the company he represented failed to pay in case of loss. The action under which this decision was rendered was brought by Hood & Stombach, proprietors of a millinery store at Panora, Ia., against A. J. Hemphill, an insurance agent there, who represented the Mercantile Fire Insurance Co. of Chicago. Mr. Hemphill wrote a policy for a thousand dollars on their stock of goods about one year ago, and during the year fire destroyed the business. The goods were furnished on credit by the Sutherland-Flenniken Company, of Des Moines, and when the destruction was announced they began action to collect. The proprietors of the store turned over the policy to them.

An investigation showed that the company was not responsible and would not settle the loss, which was invoiced at $832.84. Attorneys were sent to the headquarters of the company in Chicago to endeavor to effect a settlement. They again refused, and explained that they had no fund with which to meet losses. They stated their premiums were *too low* to furnish funds for *losses*. Also, that they were *not in the business to pay losses*, but to furnish cheap insurance to firms throughout the country, the policies to be used more for the purpose of securing credit from wholesalers than anything else.

This decision holding the local agent liable is a move in the right direction, although the local agent himself is often financially irresponsible. But after the courts have done all they can, and the local agent has done his best, I believe good business judgment on the part of credit men would demand the names of the insurance companies protecting the property of their customers, and then ascertain with care their standing. You have Bradstreet and Dun, and what they are to the commercial standing of men, Messrs. A. M. Best & Co., of 19 William street, New York, are to insurance companies. They issue an annual

report and quarterly supplements, in which reports are made on all American and foreign stock companies, American Mutuals and Lloyds, and also Marine, Liability, Steam Boiler, Fidelity, Surety, Plate Glass, Burglary, Credit or Sprinkler Leakage Co. And these reports are in great detail, showing a full list of actual securities owned by the company, so that with this information at hand not one of you should ever be placed where your firm is embarrassed by wild-cat or irresponsible indemnity.

I have been trying to show how necessary and how easy it is for you to find out the strength or weakness of the insurance companies on which your customers are directly, and you indirectly, depending for indemnity.

Is insurance properly investigated by credit men? Well, honestly, I don't know for certain, for you may be doing all I have advised. I will say, however, from the class of companies I occasionally find on losses, some credit men either have tailed to investigate the insurance carried, or they don't know a bright gold dollar from a bath-soaked, sulphur-blackened Mount Clemens quarter. After being invited on the 20th inst. to appear before you this evening, I went to Reed City to adjust a loss in which two bankers and a leading business man were interested. I found four policies involved, one of them the Reliance Fire Underwriters, of Chicago; Edward D. Clarke, Attorney, 159 La Salle street. The assured looked meekly at me and asked, "Do you suppose it's any good?" The policy, by the way, was written at 1¼% less than we received. It is a poor time to ask if a company is good, after a fire. I have no doubt the policy was as good as Mr. Clarke, the attorney, for he has departed to a land where fire insurance is quite unnecessary, the strenuous effort of paying losses having proved too much for his delicate frame.

Our very able Insurance Commissioner, Mr. J. V. Barry, did good work recently in gathering and publishing a list of these wild-cat or unauthorized companies, and warning the public against these concerns. Insurance is absolutely worthless unless absolutely certain, that is, as certain as things mundane can be. A great conflagration may come any day in Detroit, Cincinnati, or some other city, and one who insures wants to know that his insurance is proof against conflagrations.

There are a hundred reputable companies authorized to do business in Michigan whose statements show them to be above question, and whose surplus above all liability is a guarantee that no conflagration or series of fires can materially affect their stability. It seems to me poor judgment on the part of anyone to accept policies issued by companies having but a small net surplus, when strong and reliable indemnity can be purchased at practically the same price. It is your duty to see that the companies insuring your customers, who ask credit, are the best. If rates are too high at any time, competition soon brings them down. In the evolution of underwriting, when companies become abnormally prosperous (a rare event for many years past), competition opens rates and down they come, so that the feeble plea that rates are too high is a poor excuse for a man to offer when he buys an uncollectible policy at half price from an irresponsible representative, when the worthless document is dear if presented as a prize with every yeast cake.

Your National Association passed resolutions at their June meeting. These resolutions are along right lines, but they are still lacking in one essental feature.

The retail dealer should be urged, and *forced* if need be, to carry

an adequate amount of insurance, and competent men should pass on the financial strength of the insurance companies whose policies are in force.

Strange, indeed, it is how indifferent business men often are as to their insurance. A man who will hire a lawyer and pay him $25 to examine an abstract when he buys a village lot worth $300 will be found ordering $50,000 insurance by telephone, accept, and pay for the policies, and never even open them to read them to see if they are alike, or take any steps whatever to find out if the company issuing them is solvent or even still in business. "Oh, I will leave that all to the local agent," he explains. "But why?" I ask. "Why, I hold him responsible."

Hold a local agent responsible for $50,000 insurance, when ordinarily a local agent is in great luck if he is worth 50,000 cents.

I know not what germ of financial childishness has got into the arteries of business, but I assert from wide experience that in keeping track of the financial solidity of fire insurance companies, many business men (I came near saying most business men) are inexcusably careless. I account for this in only one way. The insured does not expect a fire. Indeed, not under one policy in a hundred issued is a claim ever made. This, however, is no sufficient excuse for laxness. When you want insurance, you "want it bad." Let me urge every one of you not only to see that your customers are in possession of certain papers alleged to be insurance policies, but see also that they are insured.

Recently a traveler and his guide were ascending a mountain. They were roped together for safety. In an unexpected moment a bit of ice loosened and the traveler was carried off his feet. The guide planted his feet firmly, drove his ice axe into the ice, and braced for the shock. Will the rope hold? How all important to the traveler is the answer.

Insurance and trade are climbing the steeps of success roped together. Should a fire undermine the footing of trade, will the rope indemnity hold? How all important to trade is the answer.

Gentlemen, as you mount step by step to the height of attainment in trade, dependent often on insurance for safety, inspect the rope and insist on indemnity that indemnifies and insurance that insures.

BLOCK *et al. v.* SCHWARTZ *et al.*

(Supreme Court of Utah. March 22, 1904.)

FRAUDULENT SALES—MERCHANDISE—SALES IN BULK—RESTRICTIONS—STATUTES—CONSTITUTIONAL LAW—FREEDOM OF CONTRACT—DEPRIVATION OF PROPERTY—CLASS LEGISLATION—POLICE POWER.

1. A state statute, as to any subject within the state's jurisdiction on which the Constitutions of the state and of the United States are silent, will not be declared invalid on the ground that it is unwise, or opposed to justice and equity.

2. The term "liberty," as used in the constitutional guaranty that no person shall be deprived of life, "liberty," or property without due process of law, is not restricted to mere freedom from imprisonment, but embraces religious, civil, political, and personal rights, including the right of each citizen to purchase, hold, and sell property in the same manner and to the same extent as every other citizen.

3. Act March 14, 1901, p. 67, c. 67, provides that a sale of any portion of a stock of merchandise out of the ordinary course of trade, or a sale of an entire stock in bulk, is fraudulent and void as against creditors of the seller unless an inventory as prescribed is made five days before the sale, and all the creditors of the seller of which the purchaser has or may obtain knowledge by reasonable diligence shall have been notified thereof; and section 2 (page 68) makes the violation of the previous section a misdemeanor. *Held*, that such act was unconstitutional, as depriving a merchant owing debts of his liberty to contract, amounting to a deprivation of property without due process of law.

4. Since such act does not apply to sales of the same character by merchants not owing debts, but applies to and renders criminal the same sales by merchants who are debtors and by persons in a fiduciary capacity failing to comply with its terms, the act is unconstitutional, as class legislation.

5. Such act was not sustainable as within the state's police power.

Appeal from District Court, Salt Lake County; C. W. Morse, Judge.

Action by Sol Block and another against Samuel L. Schwartz and John Mann, intervener. From a justice's judgment in favor of intervener, reversed on appeal to the district court, intervener appeals. Reversed.

Zane & Stringfellow, for appellant. W. R. Hutchinson, for respondents.

BARTSCH, J. This action was originally brought in a justice's court on April 2, 1902, to recover $277.47 for merchandise sold and delivered to the defendant Schwartz. On the same day, at the instance of the plaintiffs, the goods were attached while in the possession of the intervener, John Mann, to whom Schwartz had previously, on March 29, 1902, sold and delivered the same for the sum of $550, which was its fair value, the purchase having been made in good faith. After the writ of attachment was levied upon the goods the purchaser filed his complaint in intervention, claiming to own all the property included in the levy, and praying that the attachment be dissolved, and the goods restored to his possession, and for damages and costs. Neither the seller nor the purchaser made an inventory of the merchandise before sale, as required by the act approved March 14, 1901, p. 67, c. 67, Sess. Laws Utah, nor did they in other respects comply with the requirements of that act. The cause was first tried in the justice's court, where judgment was rendered in favor of the intervener, and then appealed to and tried in the district court, where the sale was held fraudulent and void under the statute referred to, and judgment rendered in favor of the plaintiffs. The appeal to this court presents simply the question of the constitutionality of the law relating to the sale of merchandise in bulk, found in that enactment.

The appellant contends that the act is unconstitutional and void, and that, therefore, he cannot be punished for a violation of its provisions. He insists that it is repugnant to and in conflict with both federal and state Constitutions, in that it abridges and interferes with the inherent and inalienable rights which are guaranteed to every subject by both Constitutions. The respondent contends that the act is not in conflict with the supreme law, but is the result of a proper exercise, by the Legislature, of the police power of the state. In determining the question thus presented it behooves us to be mindful

of the fact that the enactment in controversy has, in the judgment of both the legislative and executive branches of the state government, been declared a valid exercise of legislative power. Courts will always approach such a judgment with that consideration and respect which is due to the co-ordinate branches of the government, and if, upon an examination and comparison of the enactment with the constitutional provisions which it is claimed to violate, there is a well-grounded doubt of its validity, such doubt must be resolved in favor of its constitutionality. If, however, notwithstanding the enactment was passed with all due deliberation and formalities, it be found to contravene constitutional provisions, or to constitute an infringement upon the rights of individuals guaranteed by the Constitution, then the courts have the conceded power to declare void the enactment, as being a violation of the supreme law of the land. But, although such power is lodged in the courts, they will not declare void a legislative enactment unless there is a substantial conflict between it and the Constitution; and so high a regard do the courts entertain for the judgment of the makers of the law that in determining the validity of an enactment every presumption will be indulged in favor of its constitutionality. The question of the validity of a legislative act can alone be determined by reference to the constitutional inabilities and restraints. Whenever, as to any subject within the jurisdiction of the state, the Constitutions of the state and of the United States are silent, the Legislature may speak; and when it does speak its enactment will not be declared void simply because, in the opinion of the court, it is unwise, or opposed to justice and equity. The sole question in such case is whether the act violates the supreme law of the state or of the United States. If it does, it is the plain duty of the courts to declare its invalidity. The question under consideration must be determined in the light of these principles, which have been frequently asserted by the courts.

Section 1 of the act in controversy reads: "A sale of any portion of a stock of merchandise otherwise than in the ordinary course of trade, and in the regular and usual prosecution of the seller's business, or a sale of an entire stock of merchandise in bulk, is fraudulent and void as

against the creditors of the seller, unless the seller and purchaser shall at least five days before the sale make a full and detailed inventory, showing the quantity, and so far as possible, with the exercise of reasonable diligence, the cost price to the seller of each article to be included in the sale, and unless such purchaser shall at least five days before the sale, in good faith, make full and explicit inquiry of the seller as to the names and places of residence or places of business of each and all of the creditors of the seller, and the amount owing each creditor, and unless the purchaser shall at least five days before the sale, in good faith, notify, or cause to be notified, personally or by registered mail, each of the seller's creditors of whom the purchaser has knowledge or can with the exercise of reasonable diligence acquire knowledge, of said proposed sale, and of the cost price of the merchandise to be sold and of the price proposed to be paid therefor by the purchaser." Section 2 makes the violation of the provisions of the first section a misdemeanor, and prescribes a penalty therefor. Under the provisions of this act a sale of any portion or all of a stock of merchandise, made out of the ordinary course of trade, by any merchant who has creditors, without a detailed inventory made at least five days before the sale, showing the cost price of each article, and notice of the proposed sale, the cost price, and selling price, given at least five days before the sale to each creditor, is not only fraudulent and void, but also renders both the seller and purchaser guilty of a misdemeanor, and subjects them to the penalty provided in the act for that crime. Not only this, but the merchant, though ever so solvent and able to pay his debts, must, in order to effect a sale of the whole or any portion of his stock out of the usual course of trade, expose the secrets of his business to every person who may seek to buy and to whom he may desire to sell, as well as to every creditor. The making of inventories and giving notices as required by the act, it can readily be seen, would, in many instances, almost absolutely prohibit the consummation of such sales. Such would doubtless be the practical operation of the act in its application to large department stores, where the creditors are numerous, and the stock of merchandise immense. The lapse of time necessarily incident to a

compliance with the provisions of the act would have a strong tendency to prevent advantageous sales by the class of merchants affected. In many instances it would, doubtless, require many days, or even months, to complete such an inventory and give such notices; and in active business communities purchasers are not likely to look with much favor on such delays. In this age of competition it is quite apparent that this would place such a merchant at a great disadvantage in his struggles to provide for his family—in competing with his neighbor who has no creditors. These same disadvantages would likewise follow the purchaser of the merchandise, in his endeavor to again dispose of the goods if he should happen to be a debtor.

The act appears to be unreasonably restrictive, and is liable to subject individuals to punishment for acts wholly innocent. It seems calculated to inflict upon the seller the loss of an advantageous sale, and cause the purchaser to refrain from making what might to him be an advantageous purchase, because of the risk of delay. It is favorable to one class of merchants and unfavorable to another, and thus places competitors in the same line of business upon different planes. In its operation, as to one class of merchants, it brands as criminals persons perfectly solvent, and abundantly able to discharge their debts and obligations, for making bargains according to customs and usages which have prevailed in the commercial world from time immemorial, while as to the other class the same bargains would be lawful. It holds out advantages to one and denies them to another, both pursuing the same business for a livelihood. As to the debtor class, it prevents a free exchange of lawful commodities, and thus operates in restraint of trade. Undoubtedly, the Legislature has power to legislate as to the general right of debtors to dispose of their property, and in enacting such legislation the Legislature has the right to consider the debtor's right of disposal of his property by contract or otherwise in connection with the general right of creditors to have afforded an opportunity to collect their claims; but such legislation must not transcend constitutional limitations, or invade the guarantied rights and liberties of individuals. If within such limitations, such legislation will be upheld, although it

be deemed unwise, or, in its operation, unfair and unjust. So the act in question, as we have seen, would evidently, in its general operation, result unjustly and unfairly; yet, if it does not trench upon constitutional law, it cannot be held void.

The appellant, however, claims that the enactment interferes with and abridges his inalienable rights, as well as those of others in like situation, subjects of this commonwealth; and for his and their protection against the consequences which naturally flow from such an enactment he appeals to section 1, art. 14, of Amendments to the Constitution of the United States, which, on this subject, provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." For like reasons he appeals to section 1, art. 1, of the Constitution of this state, which, *inter alia,* provides: "All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; * * * to assemble peaceably, protest against wrongs, and petition for redress of grievances;" and also to section 7 of article 1, which provides: "No person shall be deprived of life, liberty or property, without due process of law." These constitutional provisions constitute the supreme law of the commonwealth upon this subject. To that law the executive, the legislative, and the judicial departments of the government alike must bow obedience, as well as every subject. It forbids the abridgment by the state of the privileges and immunities of all citizens. Under its mandate no person can be deprived of life, liberty, or property without due process of law, and every person is entitled to the equal protection of the laws, and may acquire property, possess and protect it, as well as defend his life and liberty. These are inherent and inalienable rights of citizens, and are constitutional guaranties. An enactment, therefore, which deprives a person arbitrarily of his property, or of some part of his personal liberty, is just as much inhibited by the supreme law as one which would deprive him of life. And "liberty," in the sense in which the term is

here employed, is not restricted to mere freedom from imprisonment, but it embraces the right of a person to use his God-given powers, employ his faculties, exercise his judgment in the affairs of life, and to be free in the enjoyment and disposal of his acquisitions, subject only to such restraints as are imposed by the law of the land for the public welfare. The word "liberty," as thus employed in the Constitutions and understood in the United States, is a term of comprehensive scope. It embraces not only freedom from servitude and from imprisonment and arbitrary restraint of person, but also all our religious, civil, political, and personal rights, including the right in each subject to purchase, hold, and sell or dispose of property in the same way that his neighbor may; and of such liberties no one can be deprived except by due process of law.

Property has some essential attributes without which we could not conceive it to be property. Among these are use, enjoyment, susceptibility of purchase, sale, and of contracts in relation thereto. The taking away of any one of the essential attributes may violate the constitutional guaranty that no person shall be deprived of his property without due process of law as clearly as in case of a physical taking without due process of law. An enactment, therefore, like the one in controversy, which deprives an owner of his liberty to sell his property, or contract in relation thereto, in the same manner as others engaged in the same business might lawfully do, invades his rights guarantied by the Constitution, and cannot be upheld; and to prevent the free exchange and sale or disposal of property according to the immemorial usages of trade is to deprive it of one of its main attributes. "The third absolute right, inherent in every Englishman," says Sir William Blackstone in his classification of fundamental rights, "is that of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land." 1 Bl. Comm. 138. The right thus referred to and defined by the illustrious commentator is absolute and inherent in every American, subject of the United States, by virtue of the supreme law of the land. Therefore, "when a law annihilates the value of property, and strips it of its attributes, by which alone

it is distinguished as property, the owner is deprived of it according to the plainest interpretation, and certainly within the spirit of a constitutional provision intended especially to shield private rights from the exercise of arbitrary power." Wynehamer v. The People, 13 N. Y. 378, 398. Judge Cooley, in his work on Constitutional Limitations (6th Ed.) 484, speaking of doubtful or questionable legislation, says: "The doubt might also arise whether a regulation made for any one class of citizens, entirely arbitrary in its character, and restricting their rights, privileges, or legal capacities in a manner before unknown to the law, could be sustained, notwithstanding its generality. Distinctions in these respects must rest upon some reason upon which they can be defended—like the want of capacity in infants and insane persons; and if the Legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bounds of legislative power, even though no express constitutional provision could be pointed out with which it would come in conflict. To forbid to an individual or a class the right to the acquisition or enjoyment of property in such manner as should be permitted to the community at large would be to deprive them of liberty in particulars of primary importance to their 'pursuit of happiness.'" In Bank v. Divine Grocery Co., 97 Tenn. 603, 37 S. W. 390, it was said: "To take from property its chief element of value, and to deny to the citizen the right to use and transfer it in any proper and legitimate manner, is as much depriving him of his property as if the property itself were taken." In People v. Otis, 90 N. Y. 48, it was said: "Depriving an owner of property of one of its essential attributes, is depriving him of his property within the constitutional provisions." In State v. Goodwill, 33 W. Va. 179, 10 S. E. 285, 6 L. R. A. 621, 25 Am. St. Rep. 863, it was said: "The right to use, buy, and sell property, and contract in respect thereto, including contracts for labor—which is, as we have seen, property—is protected by the Constitution. If the Legisla-

ture, without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to one lawful trade or business, then it may prevent the prosecution of all trades, and regulate all contracts." So, in State v. Loomis, 115 Mo. 307, 22 S. W. 350, 21 L. R. A. 789, it was observed: "Liberty, we have seen, includes the right to acquire property, and that means and includes the right to make and enforce contracts. We do not say that such rights cannot be regulated by general law, but we do say that the Legislature cannot single out one class of persons who are competent to contract, and deprive them of rights in that respect which are accorded to other persons. The constitutional declaration that no person shall be deprived of life, liberty, or property without due process of law was designed to protect and preserve their existing rights against arbitrary legislation as well as against arbitrary executive and judicial acts. The sections of our statute in question deprive a class of persons of the right to make and enforce ordinary contracts, and they introduce a system of state paternalism which is at war with the fundamental principles of our government, and, as we have before said, are not due process of law." People v. Gillson, 109 N. Y. 389, 17 N. E. 343, 4 Am. St. Rep. 465, is a case where the Legislature had passed an act prohibiting the sale or disposal of any article of food, or any offer or attempt to do so, upon any representation or inducement that anything else would be delivered as a gift, prize, premium, or reward to the purchasers, and provided that any person violating any of its provisions should be deemed guilty of a misdemeanor. Mr. Justice Peckham, holding the enactment unconstitutional and void, in the course of his opinion said: "It cannot be truthfully maintained that this legislation does not seriously infringe upon the liberty of the owner or dealer in food products to pursue a lawful calling in a lawful manner, or that it does not, to some extent at least, deprive a person of his property by curtailing his power of sale; and unless this infringement and deprivation are reasonably necessary for the common welfare, or may be said to fairly tend in that direction or to that result, the legislation is invalid, as plainly violative of the constitutional provision under discussion." Again, he said: "Nor can

this act stand as a valid exercise of legislative power to enact what shall amount to a crime. The power of the Legislature to so declare is exceedingly large, and it is difficult to define its exact limit. But that there is a limit even to that power, under our Constitution, we entertain no doubt, and we think that limit has been reached and passed in the act under review. The power has been unlawfully exercised in this instance for the same reasons that we have already stated—because it violates the constitutional provision which secures to each person in this state his liberty and property, except as he shall be deprived of one or both by due process of law." In Butchers' Union Co. v. Crescent City Co., 111 U. S. 746, 4 Sup. Ct. 652, 28 L. Ed. 585, Mr. Justice Field, speaking of constitutional rights, said: "Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment. The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright." Matter of application of Jacobs, 98 N. Y. 98, 50 Am. Rep. 636; City of Clinton v. Phillips, 58 Ill. 102, 11 Am. Rep. 52; State v. Julow, 129 Mo. 163, 31 S. W. 781, 29 L. R. A. 257, 50 Am. St. Rep. 443; Millet v. People, 117 Ill. 294, 7 N. E. 631, 57 Am. Rep. 869; Wally v. Kennedy, 2 Yerg. 554, 24 Am. Dec. 511; People v. Marx, 99 N. Y. 377, 2 N. E. 29, 52 Am. Rep. 34; Yick Wo v. Hopkins, 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. Ed. 220.

Nor can the act be sustained, in its present form, as a proper exercise of the police power of the state. That power, though somewhat shrouded in mystery as to its limits, which are not easy to prescribe with precision,

has stood sponsor for multitudes of legislative enactments; but such enactments were nevertheless always bound to be within constitutional limits. The power, however broad and comprehensive, is not paramount to the Constitution, but is always bounded by its provisions. If, therefore, an act of the Legislature is repugnant to a provision of the Constitution, it cannot be held valid as a proper exercise of the police power. Likewise, if a right of property or of person be protected by the Constitution, it cannot be destroyed by any exercise of the police power either by the Legislature or the executive power of the state.

Neither the Legislature nor the executive can, under the guise of police regulation or otherwise, arbitrarily or unjustly, without good cause, restrict or infringe upon the property rights or the liberty of any subject within the protection of the supreme law; and whenever the Legislature undertakes to determine what is a proper exercise of police power, its determination is a subject for judicial scrutiny. The power may be exercised to promote the safety, health, comfort, and welfare of society, and to sustain legislation as a proper exercise of the police power it must have reference to some such end. By virtue of that power the use of property is regulated by enforcing the maxim, "*Sic utere tuo ut alienum non laedas.*" The enactment in controversy does not appear to have reference to either of the objects here indicated. It can hardly be said that a law which prevents a person, though indebted, who is abundantly able to pay his debts, from selling his property in the same way his neighbors do, and in accordance with a time-honored custom or usage, either promotes the safety, health, comfort, or welfare of the community or the state. If the act referred generally to insolvent debtors it would present a different question; but it relates simply to debtors and purchasers of debtors of a particular and specified business, whether solvent or insolvent; so that the merchant who is worth a fortune over and above his indebtedness, and who is able to respond instantly to his creditors, who may be only such because of convenience in trade and business transactions, nevertheless finds himself, under the provisions of the act, deprived of the liberty to sell his goods, or to contract in relation thereto in the same

manner that others engaged in the same business may lawfully do. Not only this, but by making a sale which would be perfectly lawful if made by his neighbor both he and his purchaser become criminals, and amenable to the penalty provided in the act.

Looking again at the provisions of the enactment, it will be observed that it aims at but one kind of business —the mercantile— and impliedly and arbitrarily divides those engaged therein into two classes. The merchants of the one class being unaffected in their property rights, may make sales and contracts in relation thereto as they see fit; while the same kind of sales and contracts, if made in the same manner by the merchants of the other class, are not only declared void, but will render both the sellers and purchasers liable to criminal prosecution. The enactment, as we have seen, not only places the debtor class in the mercantile business at a great disadvantage in competing with others in the same line of business, but its provisions are exceedingly strict and oppressive. Nor do its provisions apply generally to all debtors within the commonwealth. They apply only to merchants, who are debtors, while farmers, miners, manufacturers, traders, and other dealers, though debtors, may sell and dispose of their property when and as they please so long as they act in good faith. If the act is designed to prevent fraud, why not make it general? Looking alone at the debtor class, there appears to be such a discrimination as is difficult to reconcile with justice and fair dealing. Nor do we perceive any justification for restraining a merchant who is in debt, but solvent, from selling his merchandise, in whole or in part, as he may deem most advantageous, in order to prevent one who is solvent from exercising the same privilege.

There is another feature which must be deemed quite material in determining the validity or invalidity of this legislation. Under the terms of the act "a sale of any portion of a stock of merchandise," or "a sale of an entire stock" in bulk, made otherwise than as in the act provided, "is fraudulent and void as against creditors," and renders both the seller and buyer liable to criminal prosecution. Now, it will be noticed that nowhere in its provisions is there an exemption of any sale by administrators, executors, trustees, assignees for the benefit of creditors,

trustees in bankruptcy, or public officers acting under judicial process. There being no such exemption, it would seem that such sales of merchandise owned by debtors, made by persons acting in a fiduciary capacity or under judicial process, must also be made in accordance with the provisions of the act, in order that the seller and purchaser may avoid the penalties provided. It is evident that such a law would not only deprive property of one of its chief attributes, but would greatly hamper the administration of estates and retard the enforcing of judicial process. Nor is this law necessary for the public weal. Broad and extensive as the public power of a state is, it cannot be assumed that it warrants such legislation as this. It is true, there are extreme cases where the exercise of that power is justified by the maxim, "*Salus populi suprema lex est*," and so, in some cases of great emergency and overruling necessity, the taking or destruction of property, even without compensation and without due process of law, may be justified; but such is not this case. The police power can never avail to declare an act valid when the Constitution says it is invalid. "The limits to the exercise of the police power can only be this: The regulation must have reference to the comfort, the safety, or the welfare of society; it must not be in conflict with the provisions of the Constitution." Potter's Dwarris on Stat. & Const., 458.

Speaking of the regulation of the conduct of corporations whose charters are inviolable, by the Legislature, under the police power, Judge Cooley says: "The limits to the exercise of the police power in these cases must be this: The regulations must have reference to the comfort, safety, or welfare of society. They must not be in conflict with any of the provisions of the charter; and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges which the charter confers. In short, they must be police regulations in fact, and not amendments of the charter in curtailment of the corporate franchise." Const. Lim. (6th Ed.) 710. In Watertown v. Mayo, 109 Mass. 315, 12 Am. Rep. 694, Mr. Justice Colt said: "To a great extent the Legislature is the proper judge of the necessity for the exercise of this restraining power. It is not easy to prescribe its limit. The law will not allow rights of

property to be invaded under the guise of a police regulation for the preservation of health or protection against a threatened nuisance; and when it appears that such is not the real object and purpose of the regulation courts will interfere to protect the rights of the citizen." In Matter of Application of Jacobs, 98 N. Y. 98, 50 Am. Rep. 636, Mr. Justice Earl says: "Generally it is for the Legislature to determine what laws and regulations are needed to protect the public health and secure the public comfort and safety; and while its measures are calculated, intended, convenient, and appropriate to accomplish these ends, the exercise of its discretion is not subject to review by the courts. But they must have some relation to these ends. Under the mere guise of police regulations, personal rights and private property cannot be arbitrarily invaded, and the determination of the Legislature is not final or conclusive. If it passes an act ostensibly for the public health, and thereby destroys or takes away the property of a citizen, or interferes with his personal liberty, then it is for the courts to scrutinize the act, and see whether it really relates to and is convenient and appropriate to promote the public health." Again, referring to the same subject, he says: "Such legislation may invade one class of rights to-day and another to-morrow, and, if it can be sanctioned under the Constitution, while far removed in time, we will not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed, and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people, and a large range of other affairs long since in all civilized lands regarded as outside of governmental functions. Such governmental interferences disturb the normal adjustments of the social fabric, and usually derange the delicate and complicated machinery of industry, and cause a score of ills while attempting the removal of one." In the Slaughter-House Cases, 16 Wall, 36, 87, 21 L. Ed. 394, Mr. Justice Field, referring to the police power of the state, said: "All sorts of restrictions and burdens are imposed under it, and when these are not in conflict with any constitutional prohibitions or funda-

mental principles they cannot be successfully assailed in a judicial tribunal. * * * But under the pretense of prescribing a police regulation the state cannot be permitted to encroach upon any of the just rights of the citizen which the Constitution intended to secure against abridgement." So, in Lawton v. Steele, 152 U. S. 133, 14 Sup. Ct. 499, 38 L. Ed. 385, Mr. Justice Brown said: "To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonable for the accomplishment of the purpose, and not unduly oppressive upon individuals. The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts." Tiedeman's Lim. of Police Power, §§ 85, 194; State v. Julow, 129 Mo. 163, 31 S. W. 781, 29 L. R. A. 257, 50 Am. St. Rep. 443; *Ex parte* Whitwell, 98 Cal. 73, 32 Pac. 870, 19 L. R. A. 727, 35 Am. St. Rep. 152; Austin v. Murray, 16 Pick. 121; Commonwealth v. Alger, 7 Cush. 53, 85; *Ex parte* Sing Lee, 96 Cal. 354, 31 Pac. 245, 24 L. R. A. 195, 31 Am. St. Rep. 218; Coe v. Schultz, 47 Barb. 64; Lake View v. Rose Hill Cem. Co., 70 Ill. 191, 22 Am. Rep. 71; Bertholf v. O'Reilly, 74 N. Y. 509, 30 Am. Rep. 323; Mugler v. Kansas, 123 U. S. 623, 661, 8 Sup. Ct. 273, 31 L. Ed. 205.

The respondents cite and rely upon several cases from the states of Massachusetts, Maryland, Tennessee, and Washington, where enactments upon the same subject were enforced. While enactments of similar character have been upheld in those states, an examination shows that they all differ materially in important features from the one here under consideration. The law in Massachusetts exempts all sales from its provisions made by officers acting in a fiduciary capacity or under judicial process; and, while it declares a sale made in violation of its provisions fraudulent and void as against creditors, it does not subject the seller and buyer acting in disobedience of the law to criminal prosecution. St.

(Mass.) 1903, p. 389, c. 415. Notwithstanding this, however, it seems apparent from the opinion in Squire & Co. v. Tellier *et al.* (Mass.) 69 N. E. 312, that the Supreme Court of that state regarded their statute as going to the very limit of constitutional authority, when they said: "Although the requirements of the act are very strict, we cannot say that the determination of the Legislature, as between the interests of owners of stocks of merchandise and their creditors, was so far wrong as to render the statute unconstitutional." We apprehend, from a perusal of that opinion, that if there, as here, the determination of the Legislature had gone to the length of applying the provisions of the act to persons acting in a fiduciary or official capacity and under judicial process, and provided criminal punishment for the persons affected if they disobeyed such provisions, the court would have hesitated before pronouncing the act constitutional.

Under the act of the state of Maryland, a sale made in disobedience of the statutory provisions is not absolutely fraudulent and void, as under our enactment, but is simply "presumed to be fraudulent and void as against the creditors of the seller." Laws Md. 1900, p. 907, c. 579. In the case cited from that state the question of the constitutionality of the act was neither presented nor decided. Hart v. Roney, 93 Md. 432, 49 Atl. 661.

So, under the act of Tennessee, a sale made in disobedience of the provisions thereof is only "presumed to be fraudulent and void as against creditors of the seller." Acts Tenn. 1901, p. 234, c. 133. The Supreme Court of Tennessee held the act valid, Mr. Justice Wilkes dissenting. Neas v. Borches (Tenn.) 71 S. W. 50.

It will be noticed that in none of the acts thus far referred to, except in our own, is disobedience of the provisions thereof by the seller and buyer made a criminal offense. The Supreme Court of Missouri, in State v. Julow, 129 Mo. 163, 31 S. W. 781, 29 L. R. A. 257, 50 Am. St. Rep. 443, determining the validity of an act somewhat similar in character to the one here under consideration, said: "If an owner," etc., "obeys the law on which this prosecution rests, he is thereby deprived of a right and a liberty to contract or terminate a contract as all others may. If he disobeys it, then he is punished for the per-

formance of an act wholly innocent, unless, indeed, the doing of such act guarantied by the organic law, the exercise of a right of which the Legislature is forbidden to deprive him, can, by that body, be conclusively pronounced criminal. We deny the power of the Legislature to do this—to brand as an offense that which the Constitution designates and declares to be a right, and therefore an innocent, act; and consequently we hold that the statute which professes to exert such a power is nothing more nor less than a 'legislative judgment,' and an attempt to deprive all who are included within its terms of a constitutional right without due process of law."

The provisions of the act of the state of Washington (Sess. Laws 1901, p. 222, c. 109) are so materially different from those of our enactment that the case of McDaniels v. Connelly Shoe Co., 30 Wash. 549, 71 Pac. 37, 60 L. R. A. 947, 94 Am. St. Rep. 889, cited by respondents, as sustaining the statute of that state, cannot be regarded as authority herein. Nor, for the reasons given, can any one of the cases, from the several states referred to, be relied upon as controlling authority in this case.

While it is within the province of the Legislature to prevent fraudulent sales as a protection to creditors, still. when it attempts to do this—to remove one evil—it must not so restrict individual rights and disturb industrial pursuits and usages as to cause a score of wrongs.

We are of the opinion that the enactment in controversy abridges some of the inalienable rights of persons guarantied by the Constitution; that it is not a proper exercise of the police power of the state; that it deprives property of one of its chief attributes, and some persons of the liberty to dispose of property as others may; that it punishes criminally one person for the doing of an act which another person in the same line of business may lawfully do; that it deprives the persons to whom it applies of a right of property without due process of law; and that, therefore, it is null and void.

The judgment must be reversed, with costs, and remanded, with directions to the court below to proceed in accordance herewith. It is so ordered.

BASKIN, C. J., and MCCARTY, J., concur.

No. 8706.

LOCAL ASSOCIATION NOTES.

Grand Rapids Credit Men's Association.

The Grand Rapids Association is very much alive, even though the remissness of the Secretary in reporting the meetings to the National office may seem to indicate otherwise. Our May meeting was a memorable one, but was so late in the month that it was impossible to get a report of it in the June BULLETIN. Then the Secretary attended the annual convention, and upon returning went on a long vacation in the wilds of Michigan. But our May meeting was a hummer. We had the ladies there. And let me tell you that these Grand Rapids women are more than pretty, they are intelligent and sensible. They know a great deal about the credit business, because they understand the meaning of the word credit, as few men do. Look in the dictionary. See what credit means, and then realize, if you can, the infinite degree of trust these women have reposed in these men, especially those who have gone so far as to marry them.

The meeting was held at the Lakeside Club, and was attended by nearly all the members of the Association. Dinner was served at eight o'clock, after which short addresses were made by Assistant Secretary Stockwell, Lee M. Hutchins, R. W. Merrill and C. H. Walden. Mr. Walden spoke to the toast, "Trials and Tribulations of a Credit Man," of which there are many. He handled his subject in a charming manner. Mr. Merrill responded to the toast, "The Relation of Woman to Business." Mr. Merrill was chosen to handle that subject because of his eminent fitness for it. He has made almost as great a study of woman as of credits, and from the enthusiasm with which his talk was received, one would judge that his talk along that line had been eminently successful. The toast to which Mr. Hutchins responded was that of "The Responsibility of the Credit Man," and it was so good that it should have been published in the BULLETIN, but one day in his room at the Savoy, after hearing Mr. Apperson, of Memphis, deliver himself of a few thoughts Mr. Hutchins tore up the manuscript. Mr. Apperson is a very nice man, but he really should not be so eloquent all the time. Mr. Stockwell talked about the advantages of the Credit Men's Association, in a convincing way, but as he will probably want to use the same speech in talking to other Associations, it should not be divulged here.

At our June meeting reports were made by Messrs Hutchins and Brown, of the delegation who attended the annual convention, Mr. Brown handling the social and entertainment features in connection with the convention, Mr. Hutchins dealing with the business end. Mr. Brown spoke feelingly of the manner in which the delegates were entertained in New York, and of the really good feeling among the delegates. He was too modest to announce that he had been appointed Vice-President for Michigan, and our Association was greatly pleased when the fact of his appointment was made known to us. Mr. Brown in his capacity of Chairman of the Membership Committee has during the past year increased the membership of the Grand Rapids Association from fifty-four to ninety-two.

The appointment of Mr. Hutchins on the Committee of Resolutions was gratifying to our members, all of whom appreciate his sterling character and worth.

Our next meeting will be held in October, at which time we will have

an address by Mr. Hutchins on the desirability of filing mortgages with the county clerk, and Mr. Merrill will speak in favor of the passage of a law abolishing the days of grace on commercial paper.

New York Credit Men's Association.

The annual meeting of the New York Credit Men's Association will be held on September 15th. The nominating Committee has placed the following ticket in the field:

President—Malcolm Graham, Jr. (F. O. Pierce Co.).
Vice President—Aaron Naumburg (Jonas & Naumburg).
Treasurer—E. E. Huber (Eberhard Faber).
Members of Executive Committee—G. S. Mariager (Parke, Davis & Co.), Marcus M. Marks (David Marks & Sons), R. P. Messiter (Minot Hooper & Co.), W. E. Purdy (Chase National Bank), Owen Shepherd (International Paper Co.), Benjamin Bower (Samstag & Hilder Bros.).

Portland Credit Men's Association.

The annual meeting of the Portland Credit Mens' Association was held recently. Officers were elected for the ensuing year, the result being:

Charles W. Cottell, with Luckel, King & Cake Soap Co., President.
Paul De Haas, with C. Gotzian & Co., Vice President.
J. L. Schultz, with Prael, Hegele & Co., Treasurer.
W. L. Abrams, with Allen & Lewis, Secretary.
Alton Rogers, 800 Dekum Bldg., Ass't. Secretary.

EXECUTIVE BOARD.

A. H. Devers, of Closset & Devers; W. B. Roberts, with Lang & Company; W. H. Chapin, with W. B. Glafke & Company; W. O. Munsell, of Scott & Munsell; J. L. Schultz, with Prael, Hegele & Company; J. Crane, with W. P. Fuller & Company.

Sioux City Bureau of Credits.

The annual picnic of the Sioux City Bureau of Credits was held on Aug. 4, at Riverside Park. Sixty-four members were in attendance. After an enjoyable dinner the party boarded steam launches and proceeded "up the river." Music was furnished by a male quartette and during the evening refreshments were served. The affair was voted a success and the committee in charge, Messrs. Baker, Beck and Wood, were tendered a unanimous vote of thanks.

Directory of Officers of the National Association of Credit Men, and Affiliated Branches.

OFFICERS

OF THE

NATIONAL ASSOCIATION OF CREDIT MEN.

1904–1905.

President—Frederick W. Standart, The C. S. Morey Mercantile Co., Denver, Col.
Vice-President—F. M. Gettys (American Clothing Company), Louisville, Ky.
Secretary-Treasurer—Chas. E. Meek, New York.
Assistant Secretary—Francis J. Stockwell, St. Louis, Mo.

BOARD OF DIRECTORS.

Gustav Brenner (Elkus-Brenner Co.), San Francisco, Cal.
A. H. Foote, 501 Granite Building, St. Louis, Mo.
W. A. Given, (Pittsburg Dry Goods Company), Pittsburg, Pa.
George H. Graves (Walworth Mfg. Company), Boston, Mass.
Chas. D. Griffith, The C. D. Griffith Shoe Co., Denver, Col.
Oscar Loeffler (Goll & Frank Co.), Milwaukee, Wis.
H. H. Nance (Richardson Bros. Shoe Co.), Nashville, Tenn.
Chas. N. Robinson (Byrne & Hammer Dry Goods Co.), Omaha, Neb.
Edwin Sherman (Guthmann Carpenter & Telling), Chicago, Ill.
Robert McF. Smith (National Lead Co.), Cincinnati, O.
J. Harry Tregoe (The John A. Carroll Shoe Company), Baltimore, Md.

EX-OFFICIO.

President—Frederick W. Standart.
Vice-President—F. M. Gettys.
Secretary-Treasurer—Chas. E. Meek.

STATE VICE-PRESIDENTS, 1904-05.

ALABAMA—C. F. Moritz (C. F. Moritz & Co.), Montgomery.
CALIFORNIA—Frank Simpson (Simpson & Hack Fruit Co.), Los Angeles.
COLORADO—Wm. C. Weaver (The Daniels & Fisher Stores Co.), Denver.
CONNECTICUT—W. W. Lester (The Crofut & Knapp Co.), South Norwalk.
DELAWARE—W. J. McManus (Repauno Chemical Co.), Wilmington.
FLORIDA—J. D. Holmes (Baker & Holmes Co.), Jacksonville.
GEORGIA—H. B. Wey (Dobbs & Wey Co.), Atlanta.
ILLINOIS—N. M. Tribou (Longley, Low & Alexander), Chicago.
INDIANA—Henry A. Jeffries (Kingan & Co.), Indianapolis.
INDIAN TERRITORY—C. W. Turner (Turner Hardware Co.), Muskogee.
IOWA—S B. Laferty (Red Jacket Mfg. Co.), Davenport.
KANSAS—O. P. Taylor (Johnston-Larimer Dry Goods Co.), Wichita.
KENTUCKY—C. B. Nordeman (J. M. Robinson, Norton & Co.), Louisville.
LOUISIANA—H. B. Lacey (Walker Bros. & Co., Ltd.), New Orleans.
MAINE—Edward W. Cox (A. F. Cox & Son) Portland.
MARYLAND—A. L. Rosenaur (Baltimore Bargain House), Baltimore.
MASSACHUSETTS—W. M. Morgan, 1020 Tremont Bldg., Boston.
MICHIGAN—D. H. Brown (Michigan Chair Co.), Grand Rapids.
MINNESOTA—C. D. Maclaren (Farwell, Ozmun, Kirk & Co.), St. Paul.
MISSISSIPPI—Samuel Rothenberg (Marks, Rothenberg & Co.), Meridian.
MISSOURI—C. F. Adams (Adams & Sons), Chillicothe.
NEBRASKA—E M. Andreesen (Lee-Glass-Andreesen Hardware Co.), Omaha.
NEW HAMPSHIRE—Chas. T. Page (Page Belting Co.), Concord.
NEW JERSEY—E. S. Campbell (National Newark Banking Co.), Newark.
NEW YORK—Frank Sibley (Sibley & Helmwood), Buffalo.
NORTH CAROLINA—W. P. Hill (Oakland Manufacturing Co.), Winston-Salem.
NORTH DAKOTA—J. W. Booker (Nash Bros.), Grand Forks.
OHIO—F. E. Huggins (The Henry C. Werner Co.), Columbus.
OREGON—W. O. Munsell (Scott & Munsell), Portland.
PENNSYLVANIA—W. H. Cochrane (Bindley Hardware Co.), Pittsburg.
RHODE ISLAND—C. S. Sisson (C. S. Sisson Co.), Providence.
SOUTH CAROLINA—Robert A. Smythe (Standard Hat Co.), Charleston.
SOUTH DAKOTA—Wm. Koenig, Jr. (Andrew Kuehn Co.), Sioux Falls.
TENNESSEE—Chas. Murphy (Murphy & Robinson), Knoxville.
TEXAS—E. J. Gannon (American National Bank), Dallas.
VIRGINIA—J. C. Freeman (Drewry, Hughes & Co.), Richmond.
WASHINGTON—F. W. Baker (Seattle Hardware Co.), Seattle.
WEST VIRGINIA—F. T. Cartwright (Fostoria Glass Co.), Moundsville.
WISCONSIN—H. L. Eisen (Landauer & Co.), Milwaukee.

BRANCH ASSOCIATIONS.

ATLANTA, GA.—Atlanta Credit Men's Association. President, D. H. Kirkland, J. K. Orr Shoe Co.; Secretary, J. C. Clark, 912 English American Bldg.

BALTIMORE, MD.—The Credit Men's Association of Baltimore. President, E. A. Davis, F. A. Davis & Sons; Secretary, Edward M. Young, Carlin & Fulton.

BIRMINGHAM, ALA.—Birmingham Credit Men's Association. President, R. A. Porter, Goodall, Brown & Co.; Secretary, H. M. Beck, Beck Candy and Grocery Co.; Asst. Secretary, R. H. Eggleston.

BOSTON, MASS.—Boston Credit Men's Association. President, John R. Ainsley, Brown, Durrell & Co.; Secretary, Chas. L. Bird, 1020 Tremont Building.

BUFFALO, N. Y.—Buffalo Credit Men's Association. President, Alfred H. Burt, Burt & Sindele; Secretary, J. J. Dolphin, Iroquois Rubber Co.

CHICAGO, ILL.—The Chicago Credit Men's Association. President, F. H. McAdow, Staver Carriage Co.; Secretary, John Griggs, No. 218 La Salle St.

CINCINNATI, O.—The Cincinnati Credit Men's Association. President, A. W. Sommerfield, A. & A. W. Sommerfield & Co.; Assistant Secretary, Henry Bentley, 210 Bell Block.

CLEVELAND, O.—Cleveland Credit Men's Association. President, F. A. Grossenbacher, The Sterling & Welch Co.; Secretary, J. L. Matchett, The H. A. Boeger Cigar Co.

COLUMBUS, O.—Columbus Credit Men's Association. President, Frank E. Huggins, The Henry C. Werner Co.; Secretary, Benson G. Watson, M. & M. Bank Bldg.

DENVER, COL.—The Denver Credit Men's Association. President, C. F. Freeland, Colorado Fuel & Iron Co.; Secretary, W. C. Hall, The P. S. Hessler & Hall Mercantile Co.; Assistant Secretary, H. A. C. Mathew, Colorado National Bank Building.

DETROIT, MICH.—Detroit Credit Men's Association. President, Walter G. Seely, Jr., Detroit Stove Works; Secretary, W. S. Campbell, No. 506 Wayne County Bank Bldg.

DULUTH, MINN.—Duluth and Superior Credit Men's Association. President, F. W. Parsons, Marshall-Wells Hardware Co.; Secretary, C. J. McBride, Zenith Paper Co.

EVANSVILLE, IND.—Evansville Credit Men's Association. President, J. R. Goodwin. Goodwin Clothing Co.; Secretary, Edward Kiechle, Southern Stove Works.

GRAND RAPIDS, MICH.—Grand Rapids Credit Men's Association. President, L. J. Stevenson, Commercial Credit Co.; Secretary, A. B. Merritt, Valley City Milling Co.

KANSAS CITY, MO.—Kansas City Association of Credit Men. President, John L. Powell, Goldstandt-Powell Hat Co.; Secretary, Edwin A. Krauthoff, Karnes, New & Krauthoff.

KNOXVILLE, TENN.—Knoxville Credit Men's Association. President, Edward Henegar, Arnold, Henegar & Doyle; Secretary, Chas. Murphy, Murphy & Robinson.

LINCOLN, NEB.—Lincoln Credit Men's Association. President, M. Weil, National Bank of Commerce; Secretary, Chas. F. Schwarz, Nebraska Paper and Bag Co.

LOS ANGELES, CAL.—Los Angeles Credit Men's Association. President, Frank Simpson, Simpson & Hack Fruit Co.; Secretary, W. C. Mushet, 323 Bullard Bldg.

LOUISVILLE, KY.—Louisville Credit Men's Association. President, H. S. Gray, J. B. Speed & Co.; Secretary, R. Ruthenburg, Mendel, Weinstock & Co.

LYNCHBURG, VA.—Lynchburg Credit Men's Association. President, W. R. Winfree, Barker-Jennings Hardware Co.; Secretary, J. T. Kinnier, Kinnier, Montgomery & Co.

MEMPHIS, TENN.—The Memphis Credit Men's Association. President, C. B. Fraser, W. B. Mallory & Sons Co.; Secretary, J. C. James, 33 Madison St.

MILWAUKEE, WIS.—The Milwaukee Association of Credit Men. President, R. J. Morawetz, The Morawetz Co.; Secretary, H. M. Barrin, Standard Oil Co.

MINNEAPOLIS, MINN.—Minneapolis Credit Men's Association. President, A. E. Clerihew, The Forman-Ford Co.; Secretary, M. C. Badger, Patterson & Stevenson Co.

NASHVILLE, TENN.—Nashville Credit Men's Association. President, J. H. Orr, Orr, Jackson & Co.; Secretary, Geo. M. Thomas, American Building.

NEW ORLEANS, LA.—New Orleans Credit Men's Association. President, A. H. Kaiser, Fisher-Kaiser & Co.; Secretary, T. J. Bartlett, B. Wolf & Sons.

NEW YORK, N. Y.—The New York Credit Men's Association. President, Chas. E. Mosk (19 Liberty St.); Secretary, H. J. Sayers, No. 320 Broadway.

OMAHA, NEB.—The Omaha Association of Credit Men. President, J. H. Taylor, F. P. Kirkendall & Co.; Secretary, E. S. Ruhr, 307 Merchants' National Bank.

PHILADELPHIA, PA.—The Philadelphia Credit Men's Association. President, C. F. Shoemaker, Shoemaker & Busch; Secretary, S. W. Swanson. Room 702, No. 1001 Chestnut St.

PITTSBURGH, PA.—Pittsburgh Credit Men's Association. President, W. A. Given, The Pittsburgh Dry Goods Co.; Secretary, W. L. Danehower, Monongahela Bank Bldg.

PORTLAND, ORE.—Portland Association of Credit Men. President, Chas. W. Cottell, Lockal, Kirk & Cake Soap Co.; Secretary, W. L. Abrams, Allen & Lewis.

RICHMOND, VA.—Richmond Credit Men's Association. President, George L. Pender, American National Bank; Secretary, Jo. Lane Stern, 10 East Main St.

ROCHESTER, N. Y.—The Rochester Credit Men's Association. President, Jos. Farley, E. Reed & Co.; Secretary, Edward Weter, Yeoman & Erbe Mfg. Co.

ST. JOSEPH, MO.—St. Joseph Credit Men's Association. President, R. O. McBride, C. D. Smith Drug Co.; Secretary, F. E. Curtis, Queen Knight Millinery Co.

ST. LOUIS, MO.—The St. Louis Credit Men's Association, President, C. C. Child, Corticelli Silk Co.; Secretary, A. H. Foote, 501 Granite Building.

ST. PAUL, MINN.—St. Paul Credit Men's Association. President, George Sommers, George Sommers & Co.; Secretary, H. W. Parker, Merchants' National Bank.

SAN DIEGO, CAL.—The Credit Association of San Diego. President, Simon Levi, 420 Fifth Street. Secretary, Sam Ferry Smith, 1047 Fifth Street.

SAN FRANCISCO, CAL.—San Francisco Credit Men's Association. President, G. Brenner, Brenner-Brenner Co.; Secretary, Ben Arner, 533 Parrott Bldg.

SAVANNAH, GA.—Savannah Credit Men's Association. President, Wm. D. Krenson, J. Weed & Co.; Secretary, W. J. Donlan, Chamber of Commerce.

SEATTLE, WASH.—Credit Department, Merchants' Association. President, Jas. S. Goldsmith, Schwabacher Bros. & Co.; I. H. Jennings, Asst. Secty. 413 Bailey Bldg.

SIOUX CITY, IA.—Sioux City Bureau of Credits. President, C. P. Kilborne, International Harvester Co.; Secretary, Geo. W. Scott, Crane Co.

WICHITA, KAN.—Wichita Credit Men's Association. President, J. B. Hoose, Lehmann-Hoose Gro. Co.; Secretary, Frank Redfield, C. Potts Drug Co.

YOUNGSTOWN, O.—Youngstown Credit Men's Association. President, A. D. Thomas, J. Thomas' Sons; Secretary, Fred A. Shaw, Central Square.